



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2014-0177]

Crash Preventability Demonstration Program

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: On July 27, 2017, FMCSA announced the initiation of a crash preventability demonstration program in which the Agency would accept requests for data review (RDRs) to evaluate the preventability of certain categories of crashes through its national data correction system known as DataQs. This notice provides additional information to help submitters and other interested parties understand the demonstration program.

DATES: The crash preventability demonstration program began accepting RDRs on August 1, 2017, for crashes that occurred on or after June 1, 2017.

FOR FURTHER INFORMATION CONTACT: Mr. Catterson Oh, Compliance Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590, Telephone 202-366-6160 or by email: Catterson.Oh@dot.gov. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION

Background

In a Federal Register notice dated July 12, 2016, FMCSA proposed a demonstration program to determine the efficacy of preventability determinations on

certain types of crashes that are generally less complex. (81 FR 45210) The Agency proposed to accept RDRs to evaluate the preventability of certain categories of crashes through its national data correction system known as DataQs. It proposed that a crash challenged through an RDR would be found not preventable when documentation submitted with the RDR established that the crash was not preventable.

On July 27, 2017, FMCSA published a subsequent Federal Register notice announcing the start of the demonstration program and explaining the details of the program.

Since August 1, 2017, over 2,500 RDRs have been submitted to FMCSA. Based on the experiences operating the program for the first few months, the Agency identified some areas of the program requiring more instruction and details.

Demonstration Program Details

Correctly Submitting Eligible Crashes to the Demonstration Program

The DataQs system includes both the standard review program and the crash preventability demonstration program. Some submitters have entered crashes under the standard review program, rather than the crash preventability demonstration program, by selecting “Not an FMCSA-reportable crash” or requesting the review of an ineligible crash. A selection of “Not an FMCSA-reportable crash” is for those crashes that do not meet FMCSA’s recordable crash definition of a fatality, injury, or property damage requiring a vehicle to be towed from the scene. DataQs RDRs entered into the standard review program will be closed without a preventability determination because they were not submitted under the demonstration program. Also, when an RDR is submitted for a crash that is not eligible for the demonstration program, the system will close the RDR

without any action. Examples of ineligible crashes include those that do not fall under the eight types of crashes and those that occurred before June 1, 2017.

For the crash preventability demonstration program, submitters should choose “Crash could not be prevented,” ensure that the crash event date is on or after June 1, 2017, and select an eligible crash type. For more information, submitters should view the FMCSA video at <https://www.fmcsa.dot.gov/safety/crash-preventability-demonstration-program-video>.

Types of Crashes

The only types of crashes that will be reviewed using the RDR process during the demonstration program are:

1. When the commercial motor vehicle (CMV) was struck by a motorist driving under the influence (or related offense);
2. When the CMV was struck by a motorist driving the wrong direction;
3. When the CMV was struck in the rear;
4. When the CMV was struck while it was legally stopped or parked, including when the vehicle was unattended;
5. When the CMV struck an individual committing or attempting to commit suicide by stepping or driving in front of the CMV;
6. When the CMV sustained disabling damage after striking an animal in the roadway;
7. When the crash was the result of an infrastructure failure, falling trees, rocks, or other debris; or
8. When the CMV was struck by cargo or equipment from another vehicle.

A significant number of RDRs submitted are, in fact, not eligible for the demonstration program. Below are examples of crash types that were submitted, and determined to be not eligible for the program:

1. Crashes that do not match any eligible crash type.

2. RDRs asserting the driver who struck the CMV was operating under the influence without any supporting evidence, such as documents showing testing results, citation, or arrest.

3. RDRs submitted for crashes identified as “struck by a motorist driving the wrong direction” where the vehicle that struck the CMV was not operating completely in the wrong lane and in the wrong direction. These crashes do not include when the vehicle that struck the CMV swerved across the center line but did not travel entirely in the wrong lane and in the wrong direction. In addition, this crash type does not include crashes at intersections, crashes with vehicles completing a U-turn, or when a vehicle traveling in the same direction as the CMV crashes into the CMV for whatever reason.

Eligible crashes include when the vehicle that struck the CMV completely crossed the median or center line and traveled into opposing traffic or was operating in the wrong direction on a divided highway.

4. RDRs for crashes where the CMV was struck in other places on the vehicle, but not in the rear. For the purposes of this demonstration program, FMCSA is defining “struck in the rear” to mean only crashes when the rear plane of the CMV was struck. Crashes where the CMV was struck on the side near the rear of the vehicle, or other places on the vehicle, are not eligible. This includes crashes where the vehicle was struck at the 7 o’clock or 5 o’clock positions.

5. RDRs for crashes when the vehicle was stopped in traffic and not legally stopped or parked.

6. RDRs alleging a suicide attempt without any supporting evidence.

7. RDRs indicating the CMV struck other vehicles stopped for a fallen tree or rocks, but the CMV did not strike the tree or rocks.

8. RDRs asserting the CMV was struck by cargo or equipment, but the documentation establishes the CMV was actually hit by another vehicle.

These parameters are needed so that the Agency can accurately and consistently assess the evaluation of crashes during the demonstration program.

Documents to be Submitted

Because the burden is on the submitter to show by compelling evidence that the crash was not preventable, the submitter should submit all evidence in support of the preventability determination. The Agency considers all relevant evidence submitted. FMCSA is not, however, requiring any specific documentation in support of a preventability determination.

FMCSA advised in its July 27, 2017, Federal Register notice that the Agency could request additional information on the crash, which may include any documentation the carrier is required to maintain under the Agency's regulations. In some instances, FMCSA will request additional information to confirm that the driver was operating in compliance with applicable regulatory requirements. To date in the demonstration program, FMCSA has requested the following types of documents:

1. Proof of a valid Commercial Driver's License (CDL) on the date of the crash -
If the license was renewed after the crash date, FMCSA is unable to determine the license

status on the date of the crash because the Commercial Driver's License Information System (CDLIS) provides only the new license issuance date. If the submitter does not provide documentation of a valid CDL on the date of the crash, in response to FMCSA's request, the crash determination will be "Undecided" because FMCSA cannot confirm the driver was operating with a valid CDL.

2. Proof of a valid medical certificate on the date of the crash - If the CDLIS system indicates the medical certificate was expired on the date of the crash and evidence of a valid medical certificate on the date of the crash is not submitted in response to FMCSA's request, the crash determination will be "Undecided" because FMCSA cannot confirm the driver was operating with a valid medical certificate.

3. Proof that the driver was operating in accordance with the excepted status – If a CDL driver has an exempt license, FMCSA is requesting information about the load to confirm the driver was operating within the restrictions of the license. If the documentation of the load is not provided, the determination will be "Undecided" because FMCSA cannot confirm the driver was operating in compliance with CDL restrictions.

It is incumbent on the submitter to accurately provide the requested document such as a medical card or CDL for the date of the crash. In addition, when documents such as police accident reports and insurance papers are submitted, full copies should be provided.

Re-Opening RDRs

If a submitter receives a determination that the crash was preventable or undecided, or the RDR is closed for another reason, the RDR may be re-opened once.

The request will be reconsidered by FMCSA only if additional documentation or new information is submitted. If additional information or documentation is not provided, the RDR will be closed with the initial determination without further consideration.

Additionally, once an RDR is closed, the Agency will not be responding to additional comments submitted through the DataQs system. The RDR must be reopened and additional information submitted as cause for FMCSA to reconsider the determination.

Input from the Public

The opportunity to collect information from other parties is critical to determining the impacts and costs of this demonstration program. During the demonstration program, if a crash review results in a preliminary determination that the crash was not preventable, the Agency will publish the crash report number, U.S. DOT number, motor carrier name, crash event date, crash event State and crash type on its DataQs website.

Any member of the public with documentation or data to refute the proposed determination has 30 days to submit the documentation through the DataQs system at <https://dataqs.fmcsa.dot.gov>. Information on how to submit additional documentation is available at <https://www.fmcsa.dot.gov/safety/crash-preventability-demonstration-program>.

Any new documents or data will be reviewed and considered before FMCSA makes a final determination. Final determinations will be published on SMS within 60 days of the final decision.

However, based on feedback from some stakeholders, the Agency recognizes that some parties involved in the crash might not be able to provide input within 30 days. The

Agency will maintain a list of not preventable final determinations on its website at <https://www.fmcsa.dot.gov/safety/crash-preventability-demonstration-program>. This list will be updated monthly. If at any time during this demonstration program a party has information and documentation to counter this determination, FMCSA will accept that information at Crash.Preventability@dot.gov. Therefore, determinations may be revised after consideration of this additional information.

Agency Use of Data

As explained in the July 17, 2017, Federal Register notice, final determinations made through this demonstration program will be noted on the Agency's Safety Measurement System (SMS). No crashes are removed from SMS as a result of this demonstration program. For the purpose of prioritizing motor carriers for safety interventions, FMCSA will continue to use all crashes during the demonstration program.

The crash preventability determinations made under this program will not affect any carrier's safety rating or ability to operate. FMCSA will not issue penalties or sanctions based on these determinations, nor do they establish any obligations or impose legal requirements on any motor carrier. These determinations also will not change how the Agency will make enforcement decisions.

Information submitted about a crash as part of this demonstration program may be shared with the appropriate FMCSA Division Office for further investigation. Likewise, if an investigation reveals additional information about a crash for which the demonstration program made a preventability determination, this information may be shared within the Agency and the crash subjected to further review.

Throughout this demonstration period, FMCSA will maintain data so that at the conclusion of the demonstration program, the Agency can conduct analyses. It is expected that the Agency's analyses would include, but not be limited to, the cost of operating the test and its extrapolation to a larger program; future crash rates of carriers that submitted RDRs, future crash rates of motor carriers with not preventable crashes, and impacts to SMS crash rates and improvements to prioritization.

Additionally, under 49 U.S.C. 504(f), "No part of a report of an accident occurring in operations of a motor carrier, motor carrier of migrant workers, or motor private carrier and required by the Secretary, and no part of a report of an investigation of the accident made by the Secretary, may be admitted into evidence or used in a civil action for damages related to a matter mentioned in the report or investigation." The crash preventability determinations made under this program are intended only for FMCSA's use in determining whether the program may improve the Agency's prioritization tools. These determinations are made on the basis of information available to FMCSA at the time of the determination and are not appropriate for use by private parties in civil litigation. These determinations do not establish fault or negligence by any party and are made by persons with no personal knowledge of the crash.

DataQs

Motor carriers and drivers, as well as any member of the public, may submit crash preventability RDRs through the Agency's DataQs system. DataQs has been modified to provide this functionality. The DataQs system is available at: <https://dataqs.fmcsa.dot.gov>. The DataQs User Guide advises that it should take 2 weeks to have an RDR reviewed. The User Guide is for RDRs that are not in the demonstration

program. Based on the volume of RDRs submitted, the Agency's timeframe for review is averaging 3 to 4 weeks.

Additional information on how to submit a crash preventability RDR is available on the Agency's website at <https://www.fmcsa.dot.gov/safety/crash-preventability-demonstration-program>.

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Cathy F. Gautreaux,
Deputy Administrator.

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